The Analytical Study of Well Thought-Out Legitimate Pakhtun's Trends Regarding Marriage Binding (Shariah Prospective)

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Abstract:
Indeed, nobody can deny the role and importance of women in any peaceful society. Their contribution is not only essential to enhance the living standard but also they are life blood of prosperity and beauty of this universe. In each & every field of life their need is felt but regrettably, it is not realized by all that how much women have experienced discrimination and deprivation of their rights and freedom. Many of restrictions and limitations faced by them are due to culture and tradition. Although women play an important role in the development and success of men, but do not get any reward for their allegiance, loyalty and devotion.

Islam acknowledged equality of women with men in a great way. In Islam women get a praiseworthy and admirable position which no religion ever gave them. Islam defined their duties and ordered to treat them equally but in spite of all that the woman of today's Muslim world in general and Pakhtun society in particular is not entertaining their rights and status.

This study specifically focusses on highlighting one of the Pakhtun customs and its aspects that badly violate the religious teachings regarding the Women marriage Status and there will also be some recommendations in order to eradicate these unlawful trends from society as to empower the women in real sense.

Keywords Jirga, Swara, Pakhtunwali, Nang, Peghor , Badal

Pakhtun* and *Pakhtunwali:

Pakhtun are well known ethnic assemblage, famous for some inimitable and distinctive characteristics that almost other people hailing from different areas, mores and culture of the world are underprivileged. The interpretations of

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these characters by different social experts are totally different from one another because mysteriously sense the meanings vary according to the situation and events. Some mark them positively while others despise them. Although, *Pakhtun* culture is not very easy to understand for the one assessing it apparently but in fact, it requires a lot of time and socio-interactive sessions in order to get to the final opinions regarding their norms and values.

The code of life of *Pakhtun* or *Pakhtun* culture is" *Pakhtunwali"*[1] which is a complete way of leading life and have all the terms ,conditions, norms, values and directions in an un written form. It is not exaggeration that every individual of this society from birth to death strictly follows the directions and teachings of *Pakhtunwali* with great pleasure and honour. *Pakhtun* like their norms and values never compromise on them. They consider these values as sacred as religion.

The same approach was presented by Dr Fida Muhammad[2] in his paper titled, "Pakhtun code of Honour" as "*Pakhtunwali* is so dear to the Pakhtuns that sometimes and in some special circumstances they call it "The 5th religion," because most of the *Pakhtuns* are followers of the four creeds of Islam. So *Pakhtunwali* and its rules can only be understood with reference to the different domains of ***Nang*** or honour, the basic value of *Pakhtunwali* and a basic characteristic of a *Pakhtun* personality."[3]

The very basic and core areas or it may be called the Pillars of the *Pakhtun* culture, through which the entire lives of Pakhtun moves around are *Sharam*, *Nang*, *Peghor* and *Badal*.[4] These pillars are strictly followed by all members of the society, wether it gives the right results and positive consequences or otherwise. The complexity of these terms is, that no one can mark these in bad terms and nor it can be considered a varying from time to time, event to event and situation to situation. The same pillars of the society gives rise to *Pakhtun* society if the use and purpose is good and meanwhile the misuse and ill purpose become the cause of ignominy and indignity. Mostly, the sense of honour about women related issues or in any other minor disputes related to any one in general and specifically in relatives leads to disgusting and sordid results. In the light of it, one may call it Dark or Gray features of the *Pakhtunwali*.

***Jirga* System in *Pakhtun* Culture:**

Beings a Muslim, we have a strong belief that Almighty Allah is the only Creator of this Universe and the entire system is running smoothly according to his will, intentions and order.

Almighty Allah says in Quran;

> *"And with Him are the keys of the unseen; none knows them except Him. And He knows what is on the land and in the sea. Not a leaf falls but that He knows it*."[5]

In the same way Almighty Allah made this Universe as exam and assessment and our deeds here will be tested and we shall be asked about their

actions on the Day of Judgment. Allah also orders human beings to resolve the Disputes of your brethren.[6]

Almighty Allah, the King of the kings has created the human beings; since then, humans have conflicted in terms of creeds and belief. Decades have passed but the contention still goes on. This combat was started when the son of the very first Prophet *Hazrat Adam* (A.S) murdered his own brother. In order to wipe out such conflicts and contentions; every society has its own pre-set and pre-defined disciplines that prevent such clashes. For a democratic country a judiciary system is available that ensures justice. On the other hand, in *Pakhtun* community the same justice is provided by *Jirga* system.

According to different dictionaries, the word *Jirga* refers to the group or set[7]. The Ex. CEO of CAMP, Naveed Ahmad Shinwari explains the Jirga in His Book titled "Towards Understanding Jirga" as *Jirga* refers to the Practice and to the Institutions, gathering of elders evoked by an intermediary between contesting parties, a *Jirgamaar,* to hear the arguments of the parties. The *Jirga* is a conflict resolution process."[8] The famous writer James W. Spain defines the Jirga as, "*Jirga* can be described as an assembly or a council and it serves the function of both, the word can be applied to half a dozen men setting down together to discuss.[9]"

Jirga system is inherent in Pakhtun culture. In this way *Pakhtun* inclination is towards *Jirga* system; as, it is considered that *Jirga* is the cheapest, easiest and reliable system of getting justice. Although, it is a conventional system but they believe in it from their heart and soul. They believe it reflects their cultural norms. But now this system is being criticized badly on account of its biased decisions and in this way it is considered irrational. In fact, this system is losing its credibility as having a number of pitfalls related to society in general and specially related to women's rights and status which is badly violated by this *Jirga* system.

1. Women Status in *Pakhtun* Society [*Jirga* Prospective]:

In common observation, the *Pakhtun* culture reflects the sense that they never compromise on the women's honour. According to them, they will bear the loss of wealth and land but has zero tolerance towards their women's honour and respect. The women are the sign of honour and besides different reasons and causes of dispute and quarrel, the most common one is women's honour. Their extreme approach towards women becomes the cause of deprivation of women's rights. So it is very difficult to define some hard and fast line that explains the *Gherat* boundaries as the practices of them according to the situation and event vary and these cultural made codes and customs brings them in the valley of sins, exploitation and criminals in view of rational thinkers and the *Pakhtun* culture encourage their acts and called such action as Heroism, Bravery and so-called *Ghairat*.

The gray area beyond the positive pictures of the Pakhtun like *Melmastia*[sense of hospitality towards all visitors and deep respect to them regardless of any status, race, religion and economic affiliation], *Bada l*[Revenge

for owning Justice] and *Ghairat*-o-*Namoos* [Honour, courage and Respect] etc is hidden in forfeit of women's right in one way or other as the common practice depicts that; to maintain the status of bravery or courage in order to resolve any minor or major dispute, the women on either side becomes the sign of deprivation. Let me quote the example of one practice which is very tyrannical and brutal act in the sight of rational thinkers belonging from any culture and caste, but unfortunately used to use in *Pakhtun* society with very negligible condemn and very little disapproval expression about it which is the Custom of *Swara* and this custom has legal approval of *Jirga*.

2. *Swara* Custom:

The word ***Swara*** is Pashto word; literal meaning is the gaucho or rider girl. In Pakhtun culture, it has a broader sagacity refers to the marrying of child girl to the unmatched person of effected party as a penalty in order to disseminate the enmity and to resolve the dispute.[10]Normally this kind of acts take place after the final decision of *Jirga* and then the Party is forced to obey the decision of *Jirga*. In common practice the girl consent does not considered in this activity. This girl marriage is normally for the restoration of relation between the two parties and it is punishment which bears this innocent girl on their behalf and same way the *Shariah*'s objectives are also not accomplished. The girl used to pass his life there as a slave and she didn't demand for anything because of having *Swara* status. By this way she gets imprisonment in the shape of marriage in childhood with unmatched person and scarify for his family member's bad deeds.

3.1 *Shariah'*s Rulings regarding *Swara*:

In spite of the fact that there is extremely exploitation of women's right in this brutal activity and violation of national and international laws of human rights. In such scenario what should be positive way to deal with it and what should be legal boundaries to stop them and what should be the remedial measure in order to make the *Jirga* System with in conformity of basics Judiciary standards and how the *Jirgamaar* be trained accordingly to meet the rational approaches towards humanity in general and specially about women's rights. These all are areas, dire needs are felt to work on it but to go it thoroughly here is beyond our study.

Here the focus is to describe the *Shariah's* ruling of *Swara* marriage. For this purpose, it seems essential to highlight some related things in order to know the extent of diversion from Quranic teachings. Following are two main points that plays a vital role in explaining the desired issue which are as under;

i. *Nikah* [Nuptial نکاح]
ii. *Wilayat-e-Ijbar* [ولایت اجبار]

Nikah is a great bounty from Allah Ta'ala. The affairs of this world and the hereafter are put in order through marriage. There is a lot of wisdom and many benefits in marriage. A person saves himself from sinning and his heart is put at ease. He does not have any evil intentions and his thoughts do not begin to wander and stray. The word "*Nikah*" literally meaning is to merge, amalgamate and to unit together.[11]

According to Islamic law, *Nikah* [Nuptial] defines as;

عَقْدٌ يُفِيدُ مِلْكَ الْمُتْعَةِأَيْ حِلَّ اسْتِمْتَاعِ الرَّجُل مِنْ امْرَأَةٍ لَمْ يَمْنَعْ مِنْ نِكَاحِهَا مَانِعٌ شَرْعِيّ

Translation: The contract which capable the man to get benefit from the women in such a way that no any confrontation or contradiction comes a head with *Shariah's* directions.[12]

Wilayat-e-*ijbar* refers to the authority of child's guardians to get them married without their consent. The most authentic book of *Hanfi* school of thought *Al-Hidaya* favors the above statement of *Wilayat*-e-*Ijbar* and states as;

وَيَجُوزُ نِكَاحُ الصَّغِيرِوَالصَّغِيرَةِ إِذَازَوَّجَهُمَا الوَلِيُّ بِكرًا كَانَتِ الصَّغِيرَةُ أَو ثَيِّبًا وَالوَلِيُّ هُوَ العَصَبَةُ وَمَالِكٌ رَحِمَه الله

يُخَالِفُنَا فِي غَيرِ الأَبِ وَالشَّافِعِيُّ رَحِمَهُ اللهُ فِي غَيرِ الأَبِ وَالجَدِّ

Translation: it is permissible for the guardian to get marry of his child (boy or girl) and *Imam Malik* considered it impermissible if the guardian is other than father and *Imam Shafi* added grandfather as well with Father.[13]

In the light of above explanation it is essential to mention that the *Hanfi* school of thought gives the order of permissibility if the previous trend of the guardians is clear and transparent and no such activity observed effect the credibility, on contrary to the situation cited earlier, the Shariah ruling will be changed accordingly.

Conclusively, in the light of *Shariah'*s teachings about *Swara*, gives two different results.

3.2 Case I: If the *Jirga* decided that the one party will give the girl to effected one and the second party get agreed on this decision and they get the married to person without the consent of girl while girl is matured and she is not agree and not happy on it. In such circumstances the *Nikah*[nuptial] will not be executed and will be void.

3.3 Case II: As a result of *Jirga* decision of *Swara*, if the girl was asked for marriage by her father or guardian and she shows her agreement and consent and get ready for this marriage in order to eradicate the dispute and sacrifice herself for the family members, in such situation, the *Nikah* will be valid and will executed accordingly.

4. Pit falls in *Swara* Nuptial in the light of *Shariah*

The Quranic verses and Sayings of Allah's Messenger Muhammad peace be upon him have depth sense and everlasting impact on the humanity and go ahead from the era. One can boldly claim that *Shariah's* teachings have the solutions for all type issues concerned to any department of life. Similarly these teachings are very clear and transparent and there is no any ambiguity and confusion. There is nothing go beyond the nature of humanity and each and every order & direction of almighty Allah has a specific fruit, pleasure and satisfaction with its back, logically known or unknown to humanity.

Keeping in view the above scenario, it is observed that the local activity of *Swara* has a number of flaws and pitfalls that leads it outward from the *Shariah* circle and boundaries. Few of these pitfalls are as under;

4.1 Lacking of Core & Sacred Significance:

Shariah's teachings portray a number of objectives of marriage. One of them is the close, lenient and guileless relationship between the spouses. Consequent upon this relation creates a lot of love, sympathy and affection to each other leads them to prosper and relax life. As Almighty Allah says in Quran;

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Translation: "And it is among His signs that He has created for you wives from among yourselves, so that you may find tranquility in them, and He has created love and kindness between you. Surely in this there are signs for a people who reflect."[14]

The above objective is totally missing in *Swara* because the base of it is not to achieve the goal and purpose of nuptial but it is considered as a form of punishment activity. As a result, the entire goings-on not in fully conformity of *Shariah* but wholly violate it.

4.2 Silence about the dower [مہر]:

It is important to mention the dower during nuptial. According to the Jurist *Abu Hanifa*, by any reason if the dower was not mentioned then the *Mehar*-e-*Medhal* [مہرِمثل] become licit and mandatory.[15] The finesse and philosophy behind the dower is to make the husband in fear of lost of wealth in the form of dower if he did any kind of negative act. This fear acts as a natural check and prevents him from any kind of rude or brutal behavior. Similarly the spent money makes him more conscious about the relation. [16]

By observing the *Swara*, there is complete silence about the dower on both sides because one party considered it as a penalty and punishment so how they talk about the dower and the other party considers it their right to take the girl without any financial charge which is clear violation of the *Shariah*.

4.3 Marry an unmatched person:

As it is stated before that this nuptial ceremony is kind of punishment so there is no any equality and no one bothered about the match of couple. In common practices, the child girl get in marry with aged person which is totally unethical. The *Shariah's* teachings stress on *Kuffo* [**كفو**] which refers to the equality or matching in four things i.e. loyalty/Honesty, caste, wealth and profession in order to get marry of the couple. If there exist larger gap beyond the bearable rang between them in these mentioned areas, then the binding becomes un-permissible. So this is one of other flaw in *Swara* custom.

4.4 Discriminative Treatment :

The Islamic teachings are very clear about the rights of every individual of the society. The Islam explains the boundaries and jurisdiction of ever one, especially the number of Allah's messenger sayings are there about rights of Husbands and wives. Prophet Muhammad peace be upon him said,

وَلِزَوجِکَ عَلَیکَ حَقٌ

Translation: Your spouse has rights on you.[17]

There is other narration also high light the importance of rights of spouse.

خَيْرُكُمْ خَيْرُكُمْ لِأَهْلِهِ وَأَنَا خَيْرُكُمْ لِأَهْلِي

Translation: The best among you is one who is best to his family and I am good to my family.[18]

This is the transparent message of *Shariah* but unfortunately almost all the rights are defy of the *Swara* girl. Consequent upon this brutal act of *Swara,* the married girl faces a numerous problems in so called husband's house. That family member not considered her more than slave and they treated her likely. The above statement depicts the dark aspect of *Pakhtun* culture.

5. Distraction from Social Norms:

As I discussed earlier that there are number of flaws in this atrocious act in the context of Islamic teachings, same way there is also distraction from social norm which not only make the event of cheerful but also become the cause of numerous uneven feelings for both the families. It is commonly observed *that doing something against in-practiced norms and values in Pakhtun* society is a dreadful action and mostly people dislike it.

In the custom of *Swara,* marriages take place totally indifferent and apathetic way i.e. against the practice of society. There is no any celebration on it and it is just a formality. The family member feelings disgraced of it and no announcement taken place. Similarly the girl neither demands for dower nor the any one considered it her right and she leave her home for ever on the disposal of husband's well whether he allow her to meet parents, brother and sisters or not. The husband family member considered not more than slave.

6. Conclusion:

There is no doubt that *Pakhtun* culture has hundreds of good features and the entire world known as the *Pakhtun* because of these distinct characteristics. They are honorable, hospitable, conservative to their rituals, intelligent and invincible people but on contrary, they have some dark characteristics as one of them is discussed above [*Swara*] which is not only responsible to make a black spot on their clear image but also list them in cruel, brutal and vicious people in the eyes of international community.

Conclusively the act of *Swara* is one of the wretched and dismal customs of Pakhtun society having no legitimating status in the light of *Shariah's* Standard and also disapproval from other human standards. Dire need is felt to

eradicate this in order to make them a peaceful society which is demand of the day. How it will be possible, the solid and concrete remedial measure is to develop the local *Jirga* system and train the *Jirgamaar* [decision makers]. What should be the procedure of their training and how the *Jirga* System is developed? The door is open for further research.

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